# COMMENTS OF THE MEDICAL PRESS

ON THE

# ALLEGED

# MALPRACTICE SUIT

OF

# WALSH *vs.* SAYRE.

New York:
GEORGE H. SHAW & CO., LAW PRINTERS,
*No. 176 Fulton Street.*
1871.

# COMMENTS

OF THE

# MEDICAL PRESS

ON THE ALLEGED

# MALPRACTICE SUIT

OF

## WALSH *vs.* SAYRE.

---

New York:
GEO. H. SHAW & CO., LAW PRINTERS,
No. 176 FULTON STREET.
1871.

# NOTICE.

THE alleged malpractice suit of Walsh *vs.* Sayre, which we published at the time of the trial, having excited a great deal of attention both in this country and in Europe, we have been induced to collect the editorials on the subject from such medical journals as have come before us, and publish them in pamphlet form for the benefit of the profession.

GEO. H. SHAW & CO.,
Law Publishers.

# COMMENTS

OF THE

# MEDICAL PRESS, ETC.

*From the New York Medical Journal, July*, 1870.

We take from the law columns of the *World*, of June 19, 1870, the following report of this case, which has attracted so much attention among the profession of this city. Such a righteous verdict as this will go far toward doing away with the tendency which is so common among certain lay-people to attempt to extort money from physicians and surgeons for alleged malpractice. The allowance given to the defendant is the extremest amount authorized by law, though it is by no means probable that it will reimburse Dr. Sayre for his expenditure of money alone in defending the suit, to say nothing of the demands made upon his time in collecting and arranging evidence, &c. We have but a single regret to offer in view of the happy termination of this suit, and that is, that those who instigate such proceedings could not be made to suffer an equally severe penalty.

*From the New York Medical Journal, December*, 1870.

We have already referred to this case in a somewhat pointed manner, and our remarks have been copied approvingly in the English journals. The importance of the principle established by the decision of the Court, however, induces us again to call

attention to it, which we do by copying from the *Citizen*, of this city, the following note, which sums up the whole case very succinctly:

"Dr. Lewis A. Sayre, the well known surgeon of this city, "has just succeeded in bringing to a close a suit against him "for alleged malpractice, and vindicating his reputation trium- "phantly against the slanders sought to be cast upon it.

"It seems that a mother brought a child, suffering, as was "supposed, from hip disease. This idea the doctor quickly "ascertained to be an error, and with his accustomed prompti- "tude, he opened the swelling, which proved to be a scrofulous "abscess, and discharged the matter. The child, however, "began to cry; the mother became frantic, carried it away at "once, and failed to bring it back, as she was directed, for "subsequent treatment; it was unhealthy, and the sore "remained open several months. The attending physician, an "ignorant pretender who could not answer the simplest ques- "tions in anatomy, started the foolish charge that Dr. Sayre "had punctured the hip joint, and let out the synovial fluid, "which lubricates that important articulation. Other doctors "were induced by misrepresentation to accept this view rather "hastily, and a lawsuit was the consequence. The absurdity "of the charge, however, was made so manifest on the trial "that the plaintiff's lawyer practically abandoned the case.

"So far so well, and we were pleased to receive a copy of "the testimony and proceedings, which the defendant has "caused to be printed in pamphlet form, and to observe how "clearly he had freed his skirts from the damaging accusation. "That was, however, mainly a private concern of Dr. Sayre, "and only interested us as one of his friends. The point of "public importance is, that in the course of the suit a new "precedent was established. The defendant demanded that "the child should be subjected to a personal examination by "experts, as access to it had been denied. This application "was strenuously resisted, but was finally granted in an able "decision rendered by Judge Jones, of the Supreme Court. He

" reasoned from analogous cases, such as alleged impotence or " pregnancy, and traced back the origin of bills of discovery, " and placed this upon the same footing. His ruling, in this " instance, is one of the greatest advances in jurisprudence " made by the Courts during half a century, and will do much " to discover the truth and to prevent malicious attacks upon " medical men. It puts an end to pretended injuries and " trumped up sufferings, which disappear as soon as the trial is " over and the damages secured.

" Dr. Sayre deserves the thanks of his medical associates for " securing this result, and for the vigorous way in which he " defended this case, and so helped to discourage groundless " and extortionate actions."

The British *Medical Journal*, in commenting upon this case, reproves very sharply the action of several of the physicians engaged in this case, and indorses most heartily our own comments made several months ago.

*From the Medical Record, N. Y., Nov.* 1, 1870.

A suit for malpractice which has some interest to surgeons has just been terminated in this city. The defendant was Dr. Lewis A. Sayre, of this city. The patient, a child suffering from scrofulous abscess of the hip, was brought to him by the parent, who supposed the disease to be *morbus coxarius*. She was informed to the contrary, and the abscess was opened. The child screamed, and the mother became frantic and left the office with great precipitancy. The patient was not seen again by the surgeon professionally. A foolish charge was started that the latter had punctured the hip joint by mistake, and consequently maimed the patient for life. This view was accepted by some medical men, who were induced to believe the misrepresentations of the patient's friends, and the case found its way, as is usual under such circumstances, into the courts.

We are pleased to say, on behalf of Dr. Sayre and the pro-

fession at large, that the plaintiff failed to substantiate the charge and was non-suited.

The point, however, is, that in the course of the suit a new precedent was established. Dr. Sayre demanded that the child should be subjected to a personal examination by experts, as access to it had been denied. This application, at first strenuously resisted, was finally granted in an able decision rendered by Judge Jones, of the Supreme Court. He reasoned from analagous cases, such as alleged impotence or pregnancy, and traced back the origin of bills of discovery, and placed this upon the same footing. His ruling in this instance is one of the greatest advances in medical jurisprudence made by the Courts during half a century, and will do much in future to discover the truth and to prevent malicious attacks upon medical men. It virtually puts an end to the pretended injuries and trumped up sufferings, which disappear as soon as the trial is over and the damages secured. We congratulate the defendant as being an instrument to so desirable an end.

*From the New York Medical Gazette, October* 1, 1870.

We have received a report of the proceedings in the alleged malpractice suit of Walsh *vs.* Sayre, which establishes a precedent of much importance to surgeons on a point manifestly of such simple justice, that it is difficult to understand how its judicial settlement could have been so long delayed.

The circumstances of the case are briefly these: On the 2d of April, 1868, Mrs. Walsh, the wife of a mechanic, came to the office of Dr. Lewis A. Sayre, with a child about seven years old, suffering from a chronic abscess in the left gluteal region. Several physicians (among whom were Dr. Neftel and Dr. S. W. Gross) happening to be present, and some difference of opinion being expressed as to the existence of fluctuation, Dr. Sayre first used an exploring trocar, which evidently passed into

a cavity, and gave issue to pus. The puncture was then enlarged with a bistoury and more than a pint of pus escaped, together with a number of sloughs of connective tissue. The opening was made above and behind the trochanter major, near the crest of the ilium. A solution of carbolic acid was then applied and a bandage adjusted, and the mother was requested to bring the child again in order that the cause of the difficulty might be further sought for. This she promised to do; but instead of fulfilling the engagement, the child was, some time afterwards, taken, at the instigation of an apothecary who acted as the family attendant, to two surgeons of eminence, both of whom, finding a slight discharge still existing, appear from the evidence to have given an opinion that this discharge was synovial fluid and that the joint had been opened; this opinion being given on the mother's statement that a long needle was thrust five or six times into the child's hip, and aparently without investigation of the previous history of the case, or thorough examination of its present condition. Dr. Sayre heard nothing more of the affair until he was unexpectedly served with notice of a suit for malpractice in having punctured the hip joint, damages being laid at $20,000. As the most obvious way of demonstrating the truth or falsity of the charge, the defendant demanded that a physical examination of the patient should be made on the preliminary hearing of the case; but to this the plaintiff's attorney, Mr. Edwin James (whose management of the affair subsequently called forth severe rebuke from the Referees), objected, on the technical quibble that nothing but an oral examination was provided for by law; and, strange to say, the Court felt compelled to sustain his objection, as there was no precedent allowing personal inspection prior to the trial of the cause. Appeal being made from this decision to the equity side of the Court, Hon. Samuel Jones, Justice, it was ruled that such inspection was right and proper, and an order for its performance was issued. In pursuance thereof, Drs. Frank H. Hamilton, Ernest Krackowizer and William H. Van Buren examined the plaintiff on the 19th

of November, 1868, and reported their conviction "from the "position of the cicatrix and the condition of the hip joint, "that it was not punctured at the time of the operation per- "formed by Dr. Sayre, as charged in the complaint. There was "no deviation or tenderness of the entire spinal column. There "was an open ulcer on the outer and posterior portion of the "thigh, about four inches below the hip joint, and another near "the sacro-iliac junction, the edges of which were inflamed; "and there was considerable inflammation and infiltration in the "cellular tissue around them, which probably was the obstruc- "tion to the perfectly free flexion and adduction of the thigh "on that side. There was considerable pain on pressure, and "fulness over the sacro-iliac junction, and it is our opinion that "this was the original seat of the disease, and that the coxo- "femoral articulation was in a perfectly normal condition, as it "is at present."

Through various of the law's delays, the case did not reach trial until May of the present year, when it was heard before a Court of Reference, consisting of Messrs. Traphagen and Estes and Dr. Swinburne, who, after careful consideration of much testimony, rendered judgment for the defendant.

While the most important feature of this case is undoubtedly the precedent fixed with regard to physical examination in suits for alleged malpractice, it illustrates two other lessons which we have frequently endeavored to impress: namely, the inefficiency of any written code to prevent infractions of professional ethics, and the necessity for some authorative system of registration of qualified practitioners. The apparent cause of all the mischief in this unfortunate affair is a person whose medical curriculum seems to have been confined to a clerkship in two drug stores (in one of which he "kept the prescription book, so far as "pasting in the book the prescriptions was concerned") and an engagement in a castor oil factory; who "refuses to answer" what medical college, if any, he has attended; who confesses his inability to mention a single one of the ligaments of the

hip joint; who is "not positive" as to the difference between a serous and sanious discharge; and who, nevertheless, informs the patient's mother that it was a wonder it did not die under the operation, and (before cross-examination) speaks quite positively of the unmistakable character of synovia. Of the two surgeons who afterwards gave advice in the case, one, at least, would hardly have consented to share the treatment with such an individual under full knowledge of these circumstances. If we mistake not, the Medical Society of the County of New York possesses certain hitherto unexercised powers over medical practitioners within its jurisdiction, and we would urge upon that body to ascertain the extent of its authority, and to enforce the same without delay.

As concerns the ethical aspects of the affair in question, one of the consulting surgeons—who testifies on the trial that the discharge which he noticed might have come from an ulcer or from an abscessal membrane—felt justified, at the time of the examination in expressing his suspicion that it came from the cavity of the joint, and in a subsequent interview between him and Dr. Sayre, an ear-witness testifies to his having remarked that he supposed the suit was merely brought to obtain the payment of a little money, but that if he had thought it would have come to a "regular trial," he would have stopped it. The other gentleman (who frankly admitted that his professional estimate of the importance of a case is based on "the fee, as regards it") asserts his competence to distinguish synovia from any other secretion without microscopical or chemical examination, and "dares say" he stated an opinion that Dr. Sayre had punctured the hip joint, although he "took no interest in the child's case "at all," and not thinking it of much consequence, from his peculiar professional point of view, "got rid of it," without regard to its cure or curability.

While we know of no clause in the Code of Ethics of which these gentlemen's conduct is a literal violation, there can be no

doubt that such expressions of adverse opinion, so given, and not founded on absolute certainty, are infractions of that spirit of mutual courtesy and considerateness which should govern the members of our profession; and we again record our firm conviction that such occurrences would be far less frequent than they now are, if, instead of the paltry technicalities of a written document, professional actions were left to be judged by the *lex non scripta* which rules among well-bred men in other walks of life, and which controls our own profession in other civilized countries.

*From the Medical Times, Philadelphia, Jan.* 2, 1871.

EXAMINATION BY EXPERTS.

In a recent trial in New York, Dr. Sayre being accused of malpractice, an application was made by his counsel for an examination by experts of the actual condition of the plaintiff.

After much opposition, the demand was acceded to. The result was that the charge could not be sustained, and the plaintiff was non-suited. This most desirable precedent, if followed, will be of great benefit to the cause of justice, since it shields the profession on the one hand from vexatious and groundless persecutions, and on the other, from the imputation of shirking a fair inquiry into the actual merits of the cases in which they were attacked.

*From the National Medical Journal, Oct.*, 1870.

We were inadvertently led into an error in our last issue, by stating that, in the suit of Walsh *vs.* Sayre, for alleged malpractice, the plaintiff recovered $20,000, and the extra allowance, adjudged by the Court, of five per cent. on the amount decreed. The paragraph was transferred to our department of "Jottings," almost *verbatim*, from a certain popular and usually reliable journal. It now appears that just the contrary to this statement is the fact. The case, after patient hearing of testi-

mony, was dismissed, the Referees appointed by the Court being satisfied there was no ground of action whatever. Instead, therefore, of Dr. Sayre having been amerced in the sum of $20,000, he was entirely exculpated by the tribunal having the case in charge, and actually allowed by the Judge $1,000, it being five per cent. of the amount claimed as damages by the plaintiff!

We are gratified, therefore, that our attention has been called to this careless blunder by a cotemporary, and we most cordially congratulate Dr. Sayre, whose eminent position as a surgeon is universally acknowledged, upon his triumphant and honorable acquittal of the grave charges preferred against him.

A more flimsy and wholly unfounded accusation was never before entertained by a court of justice, as will be readily seen by perusing the printed history of the trial, just published; and instead of injuring the doctor, will only confirm his already established reputation.

*From the Medical and Surgical Reporter, Philadelphia, Oct. 1, 1870.*

The alleged malpractice suit of Walsh *vs.* Sayre, makes a pamphlet of 190 pages octavo. It is of more value than a mere defense of an individual surgeon's reputation. It establishes some important points in medical law. As one of Dr. Sayre's friends says: "It is worth the while to know that a Court can and will order an examination of the patient by a board of unprejudiced surgical experts *at the time the case comes into Court.* It is even more satisfactory to know that a groundless suit, instigated by malice, cannot be undertaken with impunity; but that the plaintiff may be properly punished by the infliction of extra and unusual costs upon him by the Court."

*From the National Medical Journal, January 1st, 1871.—Edited by C. C. Cox, Washington, D. C.*

The following, from the New York *Sun*, is so manly and just a defense of the profession against the wanton and unfounded charges often preferred by worthless parties against eminent physicians and surgeons, aided and abetted by attorneys who have no higher appreciation of law than what is comprised in "fat contentions and flowing fees," that we cannot refrain from quoting it at length.

While wilful malpractice should always be rigidly punished, a lawyer cannot be too careful in arraying himself against men of acknowledged reputation without first being sure of his ground. *Verbum sap.*

"The Perils of Surgical Practice.

"Next to editors, doctors seem to have about the hardest "time of all classes of professional men. Editors are up all "night, and doctors are up a part of pretty much every night. "Editorial work is harassing and exhausting, but medical "services are almost as much so. Editorial pay, for the most "part, is poor, and so is that of the physician; and, to crown "all, as an editor in the discharge of his duty is a frequent "target for libel suits, so a doctor, when he has done his best "and failed to satisfy his patient, is not less frequently sub-"jected to an action for damages for malpractice. It is with "considerable satisfaction, therefore, that we observe two signal "victories recently gained by gentlemen of the medical pro-"fession over persons who have wantonly and unjustly assailed "their reputations, and sought to hold them responsible for "bodily injuries which were the result of their own misfortunes "or want of prudence.

"On the second of April, 1868, one of our eminent New York "surgeons, Dr. Lewis D. Sayre, had brought to him by one of "his assistants a little girl about seven years of age afflicted with "a large swelling on the left hip. The mother of the child, who

" was quite a poor woman, accompanied her. Detecting a " waving movement in the swelling, the doctor pronounced it " a chronic abscess, proceeding, however, not from disease " of the hip joint, but from some source further removed— " probably the backbone. To ascertain the true state of the " case, he pierced the swelling with a needle, the withdrawal of " which was followed by a little matter; and the opening being " enlarged by the use of proper instruments, about a pint more " of matter gushed out, accompanied with lumps of diseased " tissue—one of them the size of a black walnut. Naturally " the child screamed, and the mother became in consequence " much excited, and could hardly be prevailed upon to have the " abscess dressed. Both mother and child then left, with the " understandiug that they were to return the next day. They " failed to keep the appointment, and the next Dr. Sayre heard " of them was from papers served on him in a suit on behalf of " the child, charging him with malpractice, and averring that " instead of his opening an abscess, as he evidently did, he had " broken the membrane which contains the fluid for lubricating " the hip joint, known in medical language as the synovial " fluid, and thus permanently destroyed the use of the joint.

" It seems that the mother of the child, after leaving Dr. " Sayre, had gone to a person named Vaughan, who, though he " had never regularly studied at any medical college, or taken " a diploma, called himself a doctor, and practiced as such. " Judging only from the mother's story, and by the appearance " of the discharge from the swelling, this man made up his " mind that the joint had been injured, and took the child to " Dr. Willard Parker, who, with most reprehensible and un- " professional thoughtlessness, confirmed Vaughan's opinion " without making any inquiries of Dr. Sayre. Dr. Carnochan, " now health officer, was also consulted, and he did the same " thing. Neither of these gentlemen apparently cared enough " for the reputation of a professional brother to make more " than a brief and hurried examination of the case, and then " coincide in the opinion of Vaughan and pocket their fee. " The result was that the action was brought against Dr. Sayre, " and the damages were laid at twenty thousand dollars.

‘ Finding that he was in for a lawsuit, and that at any rate
“ his professional reputation was involved, Dr. Sayre determined
“ to push the matter through. He had an examination of the
“ child made, before the trial, by three physicians, so as to
“ demonstrate exactly the spot on her hip where he had pierced
“ into the abscess: and then, although the complainant wished
“ to abandon the case, forced it on before three Referees, and
“ obtained a unanimous decision in his favor. It was proved
“ beyond all question that he had opened an abscess, and had
“ not injured the joint; and he now holds a judgment of nearly
“ fifteen hundred dollars against the child's guardian for his
“ costs and counsel fees in defending the suit.*

“ The other case we refer to is that of Dr. John J. Reese, of
“ Philadelphia, the physician of the House of Refuge in that
“ city. The plaintiff was a painter, who, on the 2d of Feb-
“ ruary, 1869, while painting the outside of the house, fell from
“ the jack on which he was standing, a distance of twenty-
“ eight feet, striking a fence. Dr. Reese was immediately sent
“ for, and after thorough examination found that no bones were
“ broken, and had the patient removed to his home in a distant
“ part of the city, where, at great inconvenience to himself, he
“ attended him more than three weeks. Another physician,
“ Dr. Agnew, was then called in, and he too pronounced the
“ case to be not one of any broken bones. However, when the
“ painter came to get about, he found that one leg was shorter
“ than the other, and thereupon brought a suit for malpractice
“ against Dr. Reese, because he had not prevented this result
“ of his fall. His idea was that a bone had been broken, and
“ that in consequence of the doctor's not having found it out, it
“ had shrunk in growing together again. It is scarcely neces-
“ sary to say that Dr. Reese was triumphantly sustained by the
“ medical fraternity and by the Court. It was shown that the
“ shortening of the leg was the result of the jar of the fall, and
“ was in no sense attributable to bad management.

---

* Walsh immediately applied for the benefit of the Bankrupt Act, and therefore the judgment was useless.

"It is to be hoped that the result of these two cases may "serve as a warning to silly patients and scheming pettifoggers "not to bring groundless suits against physicians, with the idea "that they can make money by it. Both Dr. Sayre and Dr. "Reese have rendered the profession a great service by refus- "ing to be made victims in this way and punishing their per- secutors with costs."

---

The preceding quotations are from the city daily press. We add an article from high English medical authority in reference to this subject. It appeared in the *Medical Times and Gazette* of October 22, 1870, and is a clear, direct, trenchant *exposé* of the Sayre case. A little bold probing after this fashion of professional irregularities by the journals on this side the water would prevent such disgraceful and baseless charges as assailed the reputation of one of the most respectable American surgeons. The article we publish entire.

"EXTRAORDINARY CASE OF ALLEGED MALPRACTICE.

"An account of a case of alleged malpraxis has just reached "us from over the Atlantic, as shameful and as shameless as "any on record. The defendant, Dr. Sayre, of New York, is "well known as a surgeon and as an author—a man of estab- "lished reputation. One day there was brought to him a little "girl with a tumour in the gluteal region. The diagnosis rest- "ed between a fatty tumour and an abscess. On exploration "pus exuded, and on opening it farther, a large quantity of "pus with shreds or curdy material, such as is not uncommon "in scrofulous abscesses, escaped, and the wound was dressed. "No fee was paid. The child was not brought back as direct- "ed, but some time thereafter an action was laid against Dr. "Sayre for damages to the amount of 20,000 dollars—the "plaintiff's agent bearing the somewhat suspicious name of "Edwin James, and who was further described as reaching "America for the first time in 1861 or 1862. The alleged "grounds of the action were that Dr. Sayre had pierced the

" hip joint with a needle, causing discharge of synovia and de-
" struction of the joint. The evidence for the plaintiff was
" given by a certain remarkable Dr. Vaughan, and Drs. Willard
" Parker and Carnochan. It is hardly possible to acquit the
" two last of all blame in the matter; they are both men of
" note, and knowing that they were dealing with a case which
" might prove disastrous to a professional brother, they should
" have acted more circumspectly. But Dr. Vaughan was, and,
" we suppose, is, a curiosity in his way; as far as we can make
" out from his own evidence, the sum of his medical education
" consisted in pasting physicians' prescriptions into a druggist's
" day-book. He had never attended any educational establish-
" ment where medicine was taught, and he had no diploma.
" This gentleman, further, was unable to tell the difference be-
" tween a synovial, serous, and sanious discharge, or to name a
" single ligament of the hip joint; it was, he alleged, minute
" anatomy. The old story of Brooks' minutiæ is nothing to
" this. We can easily conceive that the poor gentleman was
" taken very ill during his cross-examination, and greatly de-
" sired to have it postponed; but the advocate was unreason-
" able and held him fast. Yet it was on this man's evidence
" that the action was primarily based and Dr. Sayre subjected
" to years of annoyance.

" One very important result has, however, arisen from the
" trial in question. Dr. Sayre naturally wished to have the girl
" inspected, and the joint said to be injured examined by com-
" petent authorities, and to this, as naturally, the plaintiffs ob-
" jected. The point was argued in the Supreme Court of New
" York, and the important decision was given that it was per-
" fectly competent for the defendant to have the child so exam-
" ined, and Dr. Van Buren, Dr. Frank Hamilton and Dr.
" Krakowizer, were appointed for the purpose. Their report
" was that the joint was uninjured. That, of course, was all
" in all for Dr. Sayre; but for us the judge's decision is of most
" importance. In the olden time, when American law and jus-
" tice were more respected on this side of the water than they
" now are, the common law decisions of the one country passed
" current in the other. Whether this will be so remains to be

" seen, but at all events there it is—what lawyers most do " hanker after—a precedent.

" But to return to Drs. Willard Parker and Carnochan. " When they examined the child—which they did separately— " they found an exceedingly small orifice in the buttock, from " which escaped some clear transparent fluid which they took " for synovia, and which they therefore concluded led to the " hip joint. Yet neither gentleman seems to have taken the " trouble to pass a probe along the sinus to see where it led. " When a brother practitioner's peace and reputation are at " stake, a little more care would not be misplaced. Far more, " when Dr. Sayre called on Dr. Parker for an explanation, he " was told that Dr. Parker expected that it would be a matter " of a few hundred dollars, as in a case he himself had encoun- " tered. Had he thought it was a 'real suit, and to have a " regular trial, why he would have stopped it, as he was able.' " Now this is very wrong. Dr. Sayre was either guilty of gross " ignorance or negligence, or he was a much injured individual, " and Dr. Parker was consulted professionally to settle the " point. Certainly Dr. Parker has hereby done much to injure " his own character for fairness, if not also his reputation as a " surgeon. Dr. Carnochan was candor itself. His interest in " a case was exactly measured by the fee he received, which, " not being large in this case, he desired to be speedily rid of it " and all concerned in it. This is not quite creditable to Ameri- " can surgeons.

" But in the long run the case came on for trial before Ref- " erees appointed by the Supreme Court; both sides were " heard, and Dr. Sayre came off triumphant; but this was not " the best of it, for when the judge on the bench came to pass " judgment, in accordance with the report of the Referees, he " not only gave Dr. Sayre his costs, but also five per cent. on " the sum claimed by the plaintiff over and above. Were the " speculative attorneys and such-like people who bring vexa- " tious actions—on the chance of having them compromised— " in this country so treated, we should have, as a profession, " much less annoyance and much more peace of mind."

DANVILLE, KY., Dec. 22, 1870.

PROF. LEWIS A. SAYRE:

Sir:—The following resolutions, offered by Dr. W. B. Harlan, at the last regular meeting of the Boyle County Medical Society, held at Danville, Ky., Dec. 20th, 1870, and passed unanimously, will explain themselves:

*Resolved*, That we tender our hearty congratulations to Prof. Lewis A. Sayre, at the successful termination of the infamous suit against him for alleged malpractice, and that our gratitude is due him for his determined resistance to this iniquitous attempt to extort money.

*Resolved*, That we recognize and are deeply sensible of the great service he has rendered the profession in forcing a legal investigation of the charges, by refusing all propositions for compromise, thereby upholding the dignity and honor of the profession, and offering a commendable example for every physician similarly circumstanced to follow.

*Resolved*, That these resolutions be spread on the Minutes of the Society, and the Secretary be directed to send a copy to Dr. Sayre.

JOHN D. JACKSON,
Chairman B. C. M. S.

GEO. T. ERWIN,
Secretary B. C. M. S.

Will Dr. Sayre permit me in this connection to add my personal rejoicings at the extraordinary success he has achieved in this suit, the report of which, through Dr. Jackson, I read with great interest, and to express the gratitude I feel for the great service he has done the profession?

Respectfully,
GEO. T. ERWIN.

DR. LEWIS A. SAYRE,
285 Fifth Avenue,
New York City.

READING, PA., Dec. 6th, 1870.

DR. LEWIS A. SAYRE:

Dear Sir:—As Secretary of the Reading Medical Association, I was requested at its regular meeting, held in November last, to convey to you the congratulations of the Society upon the happy termination of the suit for alleged malpractice instituted against you in 1868.

The charge was most outrageous, whilst the result fully vindicated your claim to ability, skill and conscientiousness as a surgeon.

Accept our sincere thanks for your effort to protect the profession at large from the envious and designing, and believe me, sir, Truly yours,

JOHN B. BROOKE, M.D.,
Secretary Reading Med. Assoc'n.

---

*From the British Medical Journal, Oct.* 1, 1870.

ALLEGED MALPRACTICE.

A gentleman well known by reputation in this country as an able surgeon, Dr. Sayre, of New York, has lately been subject to the annoyance of an unfounded action for malpractice, which was, we regret to say, supported by two of his medical brethren.

A child named Walsh, aged six years, was suffering from an abscess near the left hip. Dr. Sayre was called in, and in the presence of Dr. Gross and two other surgeons, punctured it, giving exit to a large quantity of pus.

The child's father, it is said, conferred with his "family physician," a person called Vaughan, who held a consultation with Dr. J. M. Carnochan and Dr. Willard Parker. They asserted

that Dr. Sayre had punctured the joint, and allowed the synovial fluid to escape. An action to recover $20,000 was brought by the father. The case was, however, referred by the Supreme Court to three Referees—one, at least, of whom was a medical man. They found that Vaughan was not a graduated physician, but had merely been employed in drug stores; that Drs. Carnochan and Parker had not made an examination of the alleged synovial fluid; that the patient had been treated with all proper skill and care; and that she had derived benefit from the operation. The Court confirmed the report, allowing costs to Dr. Sayre. The plaintiff again brought the case before the Supreme Court, by moving that the defendant should show cause why one of the Referees — Dr. Swinburne — should not be set aside on the ground of incompetence. This was refused with costs.

Assuming the correctness of the narrative from which the preceding abstract has been taken, we must say that the action appears to have been a most disgraceful one; and that the conduct of Drs. Carnochan and Parker — who, we believe, are men of some standing in their profession in America — was, to say the least, very reprehensible. The New York *Medical Journal*, in noticing the case, makes a remark with which we heartily agree:

" We have but a single regret to offer in view of the happy " termination of the suit, and that is, that those who instigate " such proceedings could not be made to suffer an equally severe " penalty with that which they would extort from their de- " signed victims."

*From the Lancet, London.*

TRANSATLANTIC COURTESIES.

We have been favored with the receipt of a pamphlet containing some 190 pages of small type, wherein are set forth particulars of a suit instituted against Dr. Lewis A. Sayre, of New

York, for alleged malpractice. Two other well known surgeons are said to have stated that an opening made in the gluteal region of a child (the subject of the action) communicated with the joint and that synovia had escaped. But the sum and substance of all worked itself into the fact that Dr. Sayre had diagnosed a chronic abscess, had immediately opened that abscess, and had incurred the grave displeasure of the mother in so doing. Thereupon the action was brought, a verdict in favor of Dr. Sayre was recorded, and the plaintiff was ordered to pay an extra allowance of $1,000 in addition to the ordinary costs of the suit. We call attention to this trial for the purpose of congratulating Dr. Sayre. The courtesies of the profession appear to need cultivation in New York as well as on this side of the Atlantic.

*From the Albany Morning Express, February* 9, 1871.

## Proceedings of the New York State Medical Society.

Dr. Dean, from the Committee on Ethics, presented the following, which was unanimously adopted:

*Whereas*, An action for alleged malpractice was recently brought against Lewis A. Sayre, M.D., of the City of New York, a permanent member of this Society, in which he was maliciously and falsely accused, and which resulted in a triumphant vindication of his professional skill, by an award of damages in his favor; and

*Whereas*, By fearlessly meeting this groundless prosecution, in resisting all attempts at proffered compromise, and by vigorously forcing this scandalous suit to a trial, he secured a judicial decision which established a legal principle of great value to the whole medical profession, and which has been justly characterized as "one of the "greatest advances in jurisprudence during half a "century, and will do much to prevent malicious attacks "upon medical men;" therefore,

*Resolved*, That, in the opinion of this Society, the services rendered our common profession by Dr. Lewis A. Sayre, by his successful effort to protect its honor and interests, merit a distinct recognition, and that a unanimous vote of thanks is hereby tendered him.

*Resolved*, That the above Preamble and Resolution be published in the transactions of this Society, and that a copy of the same, signed by the President and Secretary, be given to Dr. Sayre.